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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/439,054	11/12/1999	CARL PHILLIP GUSLER	AT9-99-234	1182

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EXAMINER

LE, DEBBIE M

ART UNIT	PAPER NUMBER
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2177

10

DATE MAILED: 07/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/439,054

Applicant(s)

GUSLER ET AL. 

Examiner

DEBBIE M LE

Art Unit

2177

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 May 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,4-17 and 20-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-17 and 20-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's arguments filed on 5/9/02, paper # 5. Claims 2-3, 18-19 are canceled. Newly claims added are 34-38.

Applicant's arguments with respect to claims 1, 4-17, 20-38 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 7, 17, 20, 23, 33, 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Nissato (US Patent 5,539,905).

As per claim 1, Nissato discloses a system for updating a facility on a map comprising:

Building a table file, wherein the table file lists filesystems to be backed up (fig. 1, # 17, col. 1, lines 10-20);

Specifying, within said table file, one of a plurality of different backup utilities for each of said filesystem listed in said table file, said table file including different backup utilities being specified (col. 1, lines 35-39);

Accessing the table file (fig. 1, see the element contents 3507);

Executing one of said plurality of different backup utilities to backup a filesystem listed in the table file wherein said one of said plurality of different backup utilities is specified for said filesystem, further wherein different backup utilities are specified within said table file (fig. 1, #2:HOST, # 27, col. 2, lines 1-23, col. 3, lines 21-49).

As per claim 4, Nissato teaches wherein the table file comprises logical location of the filesystem to be backed up (col. 4, lines 4-29).

As per claim 7, Nissato teaches prior to back up the filesystem, splitting the filesystem on the basis of the filesystem being in use during backing up the filesystem (col. 2, lines 49-60).

Claims 17 and 33 are rejected by the same rationale as stated in independent claim 1 argument.

Claim 20 has the same limitations as claim 4; therefore, it is rejected under the same subject matter.

Claim 23 has the same limitations as claim 7; therefore, it is rejected under the same subject matter.

As per claim 38, Nissato teaches including a first filesystem and a second filesystem within said table, specifying a first backup utility for backing up said first filesystem, and specifying a second backup utility for backing up said second filesystem, wherein said first backup utility is different from said second backup utility (col. 1, lines 35-39, col. 2, lines 19-23, col. 4, lines 7-15, col. 5, lines 19-29).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-6, 8-16, 21-22, 24-26, 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nissato (US patent 5,539,905) in view of Zulch (US Patent 5,966,730).

As per claims 5-6, Nissato does not explicitly teach wherein the table file further comprises a logical location for at least on backup copy, a number of copies to be created. However, Zulch teaches at least one backup copy, a number of copies to be created (figs. 2-4, col. 5-7). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Nissato with Zulch in order to ensure that if it should happen to one of a backup fail, there is always another one there to be recovered (col. 5, lines 35-50).

Claims 21-22 are rejected by the same subject matter as to claims 5-6.

As per claims 8-10, Zulch does not explicitly teach the steps of prior to backing up the filesystem, locking the table file detecting an error, unlocking the table file, editing the table file, re-syncing logical volumes. However, using the steps of locking the table file detecting an error, unlocking the table file, editing the table file, re-syncing is considered as obvious choice of implementations to one of ordinary skill in the art in order to obtain an backup and recovery data in an efficient and reliability in a back up system.

As per claim 11-13, Nissato does not explicitly teach wherein building a table file, accessing a table file, executing said one of said plurality of backup utilities to backup the filesystem are performed by an automated script. However, Zulch teaches the script also contains a time table for when the script should be active, and wrap up interval of time for terminating a particular backup (col. 3, lines 63-67). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Nissato with Zulch to allow the system to perform a backup function with an automated script because it would make the job of an administrator easier and/or free from the tedious tasks, for example, to determining which filesystem needs to be backup (col. 4, lines 28-46).

As per claim 14-16, Nissato does not explicitly teaches unlocking the table file, re-syncing logical volumes, and splitting the filesystem are performed by an automated script. But, Zulch does teach the script can be automated executed as already have been discussed in claims 11-13 above (col. 3, lines 63-67). Therefore, using automated script to unlock table file, re-sync logical volumes, split the filesystem backup system of Zulch is considered as obvious variation to one of ordinary skill in skill in the art in order to obtain an alternative embodiment without any unexpected results.

Claims 24-26 have the same limitations as claims 8-10; therefore, they are rejected under the same subject matter.

Claims 27-29 have the same limitations as claims 11-13; therefore, they are rejected under the same subject matter.

Claims 30-32 have the same limitations as claims 14-16; therefore, they are rejected under the same subject matter.

Claims 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nissato (US patent 5,539,905) in view of Anglin (US Patent 6,026,414).

As per claims 34-37, Nissato does not explicitly teach the step of specifying one of a plurality of different backup utilities for each of said filesystem listed in said table file, said plurality of different backup utilities including an AIX, ADSM selective, ADMS incremental, and ADSM archive backup. However, Anglin discloses different backup utilities including an AIX, ADSM selective, ADMS incremental, and ADSM archive backup (col. 1, lines 46-67, col. 3, lines 57-58). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Nissato with Anglin to implement plurality of different backup utilities including an AIX, ADSM selective, ADMS incremental, and ADSM archive backup because it provide the system to be more specified and efficient when the system perform the backup function, as discloses by Anglin that "ADSM avoids the need to do a full dump to backup as only those modified file are backup. This incremental backup reduces network utilization and traffic (col. 1, lines 58-61).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEBBIE M LE whose telephone number is 703-308-6409. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOHN BREENE can be reached on 703-305-9790. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.




Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DEBBIE M LE  
Examiner  
Art Unit 2177

Debbie Le

July 23, 2004.



GRETA ROBINSON  
PRIMARY EXAMINER